Appendix 2

Report to Cabinet

Development of Oldham Cares: Single Commissioning Function

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Reason for Decision

In December 2015, the Oldham Health and Social Care economy signed up to a new and ambitious vision for care which looks to 'see the greatest and fastest possible improvement in the health and wellbeing of the Borough's residents by 2020', whilst closing a forecast financial gap of £123m over the same period. The vision is sought to be achieved through designing a health and social care system that is built upon sustainable financial models.

This paper outlines proposals which would drive development and improvements to the way health and care services are commissioned and delivered in the borough of Oldham. The creation of the new arrangements needs to be considered in a wider whole system context due to the interdependencies. Further reports will be brought to Cabinet in due course.

Recommendations

Cabinet is asked to approve:

- The establishment of the Commissioning Partnership Board, in shadow form, which is the joint committee between the Council and the CCG.
- The proposed section 75 agreement for Commissioning Partnership Board that will enable a scaling up of the integration of health and care commissioning in Oldham.
- The proposed early areas for integrated commissioning, which the Commissioning Partnership Board will focus on in 2018/19 and use to test how effective the new system is before further budgets and responsibilities are added in to the Section 75 agreement in future years.
- The use of Adult Social Care capital funding for the refurbishment and refit of the Link Centre.
- The temporary closure of the Link Centre and relocation of public facing services whilst this work is completed.

Cabinet is asked to note

- The proposal for a Single Accountable Officer to be appointed.
- The proposed Alliance provider structure to be developed between the key providers within Oldham.

Development of Oldham Cares: Single Commissioning Function

1 Background

1.1 Oldham Council and Oldham CCG have been working closely together for a number of years to ensure there is alignment and the necessary interdependencies exist between the two organisations' commissioned services.

1.2 This has been performed by the Integrated Commissioning Partnership. This group of senior officers from both organisations has been the key decision forum for the coordinating of commissioning decisions involving the two organisations.

1.3 In February 2015, the GM Devolution agreement for Health & Social Care provided a new impetus to the integration of Health & Social Care provision across GM and within each of the ten localities.

1.4 Oldham's ambition for integration is outlined in the Oldham Locality Plan, agreed in December 2015. This vision is built on the following principles;

- Focuses on improving health outcomes and performance
- Sets quality as the business strategy, and enables professionals to do the right thing within a managed systems framework
- Is patient and public centered, with effective engagement mechanisms in place to enable people to live healthy lives
- Strengthens joint approaches across all partners with a focus on prevention and the most disadvantaged
- Enables patients to make informed choices (shared decision making)
- Is needs led, but solutions developed in conjunction with providers
- Reduces unwarranted interventions (including admissions)
- Is developed using the national and international evidence base
- Supports innovation

1.5 Since then, significant work has been carried out by the Council and Oldham CCG to develop the vision, structures and processes that are needed to be put in place to make this vision a reality.

1.6 This paper provides an overview of the proposed Oldham Health & Care commissioning structures.

2 Approach to Health & Care Commissioning in Oldham

2.1 In 2015, the Oldham Health and Social Care economy signed up to a new and ambitious vision for care which looks to '*see the greatest and fastest possible improvement in the health and wellbeing of the Borough's residents by 2020'*, whilst closing a forecast financial gap of £123m over the same period. The vision is sought to be achieved through designing a health and social care system that is built upon sustainable financial models.

2.2 Since then, there have been a number of key developments that have helped us move towards integrating Health & Social Care services, including £21.4m in GM investment funding agreement secured with the GM Health & Social Care Partnership.

2.3 Oldham's GM Transformation Fund agreement is a central part to the borough's plans to increase the pace and scale of delivery. The funding will assist with:

- Supporting people to be more in control of their lives
- Having a health and social care system that is geared towards wellbeing and the prevention of ill health.
- Providing access to health services at home and in the community
- Providing social care that works with health and voluntary services to support people to look after themselves and each other

2.4 Following the Transformation Fund agreement, the Council, CCG and a number of key providers have aligned around the need for system-wide transformation in Health & Social Care. This has included high level agreement that a Local Care Organisation (LCO) model would be core to future delivery.

3 Outcomes Framework for Health & Care Commissioning

3.1 The Oldham Cares outcomes framework is designed to set out the outcomes that we want to achieve in Oldham over the next decade. These will be the headline outcomes for the system which the Council and CCG will work together to deliver, with the aim of improving the health of the population and the way the local health and social care system operates. The outcomes framework will inform commissioning priorities and the performance management of the health and care system.

3.2 Agreeing the outcomes framework is a key step in moving towards an outcomes-based commissioning model, with a single budget for clearly defined populations that rewards outcomes and not activity, promotes earlier investment and reduces duplication across the health and care system.

3.3 The outcomes framework is made up of:

- High level 'outcomes' which are the overarching results of impact of delivering care. They reflect service user / patient outcomes as well as clinical and transformational objectives; and
- Outcome indicators which are a range of specific measures that demonstrate the progress against an outcome measure

3.4

A. Healthy Population	B. Effective prevention, treatment and care	C. Service quality/health of the system
A1 Children have the best start in life	B1 People dying early from preventable causes	C1 Access to the right care at the right time.
A2 Thriving communities which promote, support and enable good physical and mental health and wellbeing.	B2 Find and treat people with undiagnosed conditions	C2 Individuals and families have the best experience possible when using services.
A3 Individuals and families are empowered to take control of their health.	B3 Support people to self-manage and self-care where appropriate	C3 Individuals and families have access to high quality treatment and care.
A4 Everyone has the opportunity and support to improve their health and wellbeing, including the most disadvantaged.	B4 Ensure mental health is central to good health and as important as physical health	C4 Health and care system is financially sustainable.

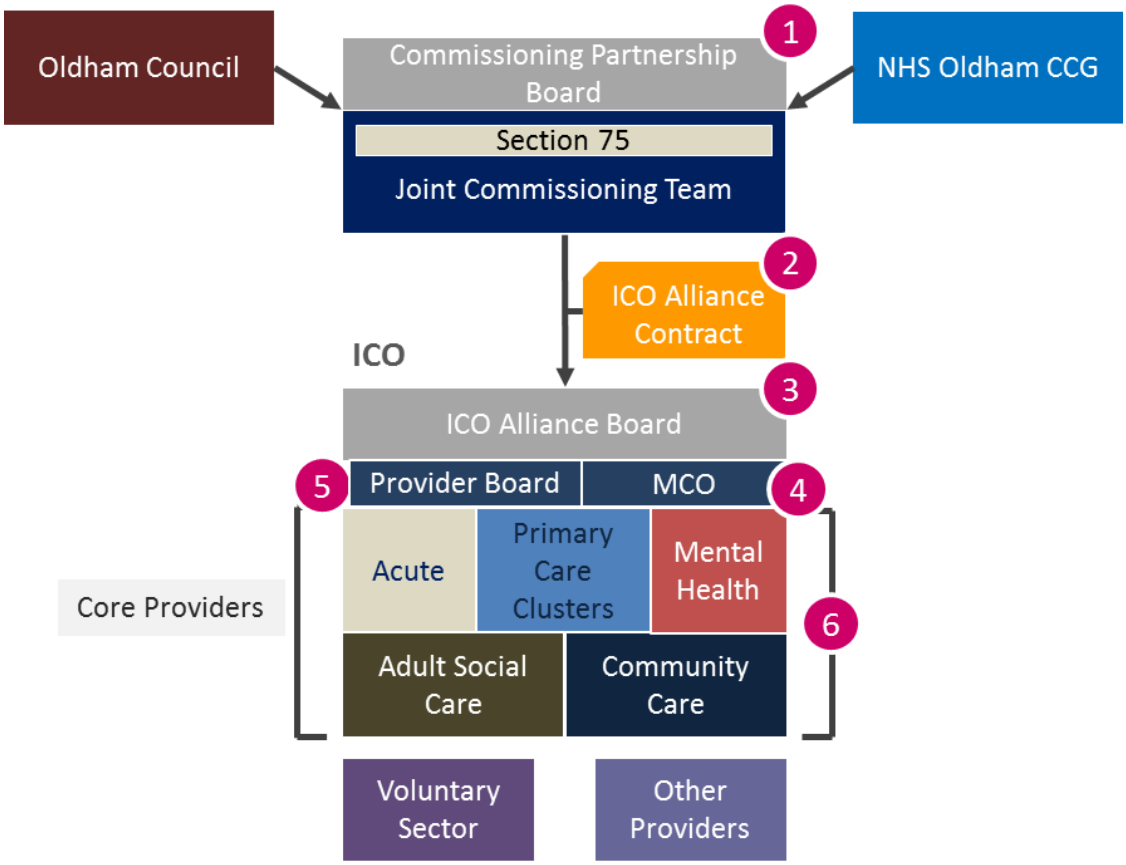
3.5 These outcomes will be supported by a range of metrics and indicators, and will be at the core of all aspects of the new Oldham Cares system, from setting the strategic context through which the Single Commissioning Function (SCF) will commission services, through to the Alliance contract and the Integrated Care Organisation (ICO), where the outcomes framework will be used to hold the core providers to account on their activity and performance, alongside their respective statutory performance frameworks.

4 Creating the Health & Care System

The diagram below outlines the proposed high level Oldham health & care system structure.

The system can be broken down into three key sections:

- Single Commissioning Arrangements (1)
- Alliance (2 & 3)
- Integrated Care Organisation (4, 5 and 6)



A description of each of the key system component parts is provided below.

4.1 Single Commissioning Arrangements

4.1.1 There will be a Commissioning Partnership Board, supported by a joint commissioning team and a section 75 agreement that outlines which budgets are pooled, aligned or remain separate. The joint commissioning team will issue an alliance contract to support core providers of care to bring providers together across the system

4.2 Establishing the Single Commissioning Function

4.2.1 One of the three key components of the new health and care system will be the establishment of a SCF. This function will see the bringing together of the current commissioning functions held by the CCG and the Council into a single joint commissioning team.

4.2.2 An assessment of existing relevant Council and CCG team structures has identified a number of teams and roles that will be needed to support aligned working in areas that fall broadly under the headings of:

- Commissioning – Council and CCG teams who undertake the design, commissioning and management health and social care services;
- Care home contract and quality management – supporting the oversight and performance of providers and organisations contracted in line with terms.

4.2.3 This SCF will include a joint commissioning team and will be co-located initially at Ellen House, and will work to a Section 75 agreement that will pool the respective commissioning budgets of the Council and CCG. This section 75 will be developed and enhanced over time, with an estimated final budget of approximately £400m.

4.2.4 The staffing input into the joint commissioning team is set out below

CCG functions	All functions of the CCG are considered to be in scope of the joint commissioning work	120 staff excluding GP Governing Body & Clinical Director roles
OMBC Adult Social Care	All staff within the Adult Social Care Commissioning, Adult Safeguarding and QA Service	23 staff (not all posts in future structure have yet been appointed to)
OMBC Children's Services	Areas are included in the first stage of work being scoped, but excludes children's social care (e.g. residential and foster placements etc.)	3 staff who work across both excluded areas of work and those in scope
OMBC Public Health	PH Commissioning staff only	TBC

4.2.5 The joint commissioning team will report directly to a Commissioning Partnership Board, with the membership of this board consisting of elected members, GPs and executive officers from both organisations. The Board will be an evolution of the current joint commissioning arrangements, which is driven through the Integrated Commissioning Partnership.

4.2.6 The new Commissioning Partnership Board will build on the Integrated Commissioning Partnership's current functions and core principles. As an outline, the Commissioning Partnership Board will be responsible for:

- All commissioning activity is built upon the high level outcomes framework as outlined above;
- The new working structures of the joint commissioning team are operating as intended;
- The various statutory governance processes and functions of the two organisations are being met as required;
- Working with the ICO Alliance Board to ensure the core providers are able to meet the alliance's contract obligations;
- Ongoing monitoring of the budget through the Section 75 agreement.

4.3 Alliance

4.3.1 The Alliance Contract will formalise the agreement between the ICO Core providers and the Commissioners

4.3.2 The Alliance Board will operate as a joint executive management team overseeing the delivery of the alliance contract

4.4 Integrated Care Organisation (ICO)

4.4.1 There are two elements to the development of the new arrangements i.e. the commissioning function (consisting of 27 adult social care employees) and the development of the ICO (consisting of approximately 225 ASC employees). The aim is to bring together the ICO element so Oldham Council Adult Social Care, PCFT and Miocare operate as one provider function operating under an alliance umbrella management arrangement. This will involve in excess of 1250 staff, 70 plus services and a budget of approximately £100 million per annum. It is proposed that the Community Health and Social Care provider will be led by one Managing Director jointly appointed by OMBC and PCFT.

4.4.2 The teams will be configured around five GP led clusters and as such estate is being scoped in each neighbourhood area. At present the only team operating is the early adopter covering the West cluster and the aim is to bring the remaining four teams on line by the beginning of July 2018 subject to the identification and supply of appropriate office accommodation with IT infrastructure. The ultimate aim is to locate the teams in one GP practice in each cluster area, however this will take time. The Link Centre building is identified as one such estate solution, with proposals developed that will enable community groups to use the ground floor and one integrated team and one therapy hub to operate from the building first and second floors.

4.4.3 Operationally, the Alliance will establish a Provider Board. This will act as a joint team working towards achieving the best possible outcomes for the Oldham population

4.4.4 Core ICO providers will be responsible for coordinating the supply and provision of care, including for patients outside of their current organisational boundaries

4.5 System Governance

4.5.1 Oldham Council and Oldham Clinical Commissioning Group will continue to exist and be ultimately accountable for the discharging of their statutory functions. The ICO provider employees will for the next two years be directly employed by their existing organisations as the future entity options are scoped further.

4.5.2 The Commissioning Partnership Board will be a joint committee of the Council and Clinical Commissioning Group. This Board will have representatives from the Cabinet and Governing Body, as well as executive officer representation and will, in the first instance, be established in shadow form to oversee and direct the two organisations health & social care commissioning responsibilities.

4.5.3 This body will report back on a regular basis to the Council's Cabinet, CCG Governing Body and the Oldham Health & Wellbeing Board.

5 Single Accountable Officer

5.1 It is proposed that a role of Single Accountable Officer (SAO) will be implemented. The SAO will need to be appointed by NHS England as the Accountable Officer of the CCG. The appointment of the Single Accountable Officer will drive the integration agenda at scale and pace by leading the commissioning function on behalf of the two statutory organisations. The post will have dual accountability, and be accountable for the discharge of both organisations statutory duties. As well as providing the necessary leadership through a complex whole system change programme, the SAO will provide stability and help drive the pace of change in delivery of the Oldham Locality Plan.

6 System Budget and Section 75 agreement

6.1 As stated in the NHS Act 2006, a Section 75 agreement allows the pooling of funds where payments may be made towards expenditure incurred in the exercise of any NHS or 'health-related' local authority functions. Section 75 also allows for one partner to take the lead in commissioning services on behalf of the other (lead commissioning) and for partners to combine resources, staff and management structures to help integrate service provision (integrated management or provision), commonly known as 'Health Act flexibilities'. Here staff can be seconded/transferred and managed by another organisation's personnel. (Section 113 of the Local Government Act allows staff to be available to 'non-employing' partner organisations). The Act also makes provision for the functions (statutory powers or duties) to be delivered on a daily basis by another partner, subject to the agreed terms of delegation. This legislation only applies to local authority and heath partners

6.2 Oldham Council and Oldham CCG have had a Section 75 agreement in place for a number of years, which has been monitored by the ICP. It is proposed that the new Section 75 agreement will in time include approximately £400m of CCG and Council commissioning budgets. In the first instance however, from April 2018, the Section 75 will cover a small number of pooled budgets, and will be added to in a phased approach. This will allow for the approach to be tested and tweaked accordingly with the five specific budget areas that have been identified for the first phase. The new Section 75 agreement will be managed and monitored by the Commissioning Partnership Board.

7 Early Areas for Integrated Commissioning

7.1 It was identified that there are a number of areas outside acute contracting where there is an opportunity for improved collaborative working between the two commissioning functions in which can be put in place in time for 2018/19. Such improved collaboration will include:

- Budgets being aligned and joint/single commissioning plans developed
- In some cases, budgets can be merged and joint commissioning occurs (based on the commissioning / contracting cycle).

7.2 Five priority budget areas have been identified. Specific focus and outcomes have been set for these priority areas for the next six months, identifying that effort will need to be directed. These priority areas outlined in the table below;

Priority area	Focus
Care Home and	• Support joint framework contracts that are to be in place by February 2019

Care Packages	• CCG CHC team and OMBC Adult SC Commissioning and Quality team are to be co-located • Support work to pool relevant budgets • Children's care packages and short breaks commissioning for SEND
Learning Disabilities	• Move to single contract for services with PCFT (and potentially other providers) by April 2018 • Support joint framework contracts that are to be in place by February 2019
Mental health	• Move to single contract for services with PCFT (and potentially other providers) by April 2018 • Single commissioning strategy by mid-2018 • Support joint framework contracts that ar to be in place by February 2019
Dementia specific services	• Continue to develop strategy and joint/single commissioning plan by 31 March 2019 when all Council and CCG contracts are due to end
Safeguarding	• Workshops required to explore potential opportunities for alignment

7.3 Some of the Council's Children's Services contracts are also in scope for aligned commissioning. The area for children's which best aligns to those identified is the children's care packages and short breaks commissioning for SEND. This is likely to be managed by aligning budgets in the first instance; with allocation of packages via SEND health and care resource panel and complex cases panel.

The programme will deliver improvements across children's services for Oldham's resident and GP registered population particularly in relation to:

- Integrated service and pathways to manage increasing demand for targeted and specialist services
- Reduction of non-elective admissions for children
- Reduce A & E attendances for children
- Reduction of health inequalities for children and young people.

7.4 For the aligned early areas of work, and staff co-location, it is not anticipated that governance or line management would change at this stage. However, the below agreed principles will be adhered to for the day to day arrangements.

Area	**Principles**
Lead commissioner	• Each organisation will maintain lead commissioning rights over existing contracts
Governance and structure	• A Joint Commissioning Function and supporting team will not be in place • Commissioning team members will remain employees of existing organisations with reporting to existing line management
Aligned commissioning	• Aligned commissioning will occur jointly dependent on the timing of the contracts • 'Quick win' areas will be identified where appropriate where contracts are: o to be re-commissioned in 2018/19 or commissioned for the first time; and o are relatively simple; and o deemed to be appropriate by both organisations • Focus on identifying opportunities for joint commissioning for different areas and associated planning
Systems and processes	• Commissioning cycles and variations should be understood, and plans to align developed and implemented where appropriate

	• Plans to be developed and implemented (where appropriate given timings) to align contract cycles for similar commissioned areas, particularly where involving the same providers
Budgets	• Budget will be aligned for each area where possible • Pooled budgets will occur where appropriate – work will be undertaken through 2018/19 to determine appropriate pooling and mechanism to do so e.g. section 75 budgets
Team	• Teams will remain separate maintaining existing line management, governance, reporting structures and roles in the short term

7.5 There are a number of 'enablers' that exist that are required to support joint commissioning and in particular, the change in the working arrangements between affected commissioning staff from the Council and CCG. The key enablers that require immediate attention to support the proposed co-location of staff from the two organisations, which includes:

- Estates
- Information Management & Technology
- Information Governance
- People Services (HR and OD)
- Communications

In the first instance, the enablers that have been focused on are those which relate to facilitating staff collaboration from both a practical and behavioural perspective. These areas are considered to be of high priority in the early stages of moving towards a joint commissioning function and as such without would hinder the success of the transition. This however is not a comprehensive list and there will be further that needs to happen as the programme progresses towards a proper joint commissioning function (i.e. the SCF)

8. Key Enabler - Estates

8.1 To facilitate the health and social care integration agenda, the current health, care and wellbeing estate in Oldham has undergone a comprehensive review to ensure it is fit for purpose.

8.2. As outlined in 4.2.3, it is proposed that the ASC joint commissioning team, as part of the Single Commissioning Function, will be located at Ellen House and become of part of a joint commissioning team with the CCG. This will free up the space currently utilised within the Civic Centre by those commissioning teams. This space will be occupied by the Adult Social Care Business Support Service, in turn partly freeing up the Southlink centre, which will be utilised by Children's Social Care services. The remaining adult care Social Workers will be deployed across the five cluster offices once identified.

8.3 Estate solutions have also been developed for the integrated community delivery teams. The aim is that by the beginning of July, we will be able to locate the five cluster based teams in a GP surgery within each cluster. This is being scoped and costed and initial proposals have been developed identifying specific GP practices.

8.4 In the first instance however, this will not be possible for all teams, and therefore a phased implementation will be needed. The first phase of this approach will be the locating, on a temporary basis, of the integrated therapy hub (currently operated by PCFT) and one integrated health and social care team at the Link Centre.

8.5 On 23 October 2017, Cabinet approved proposals to develop a resource facilities model at the Link Centre, utilising it as a key estate asset within the integration agenda for health

and social care whilst also maintaining bookable space for community organisations. Since then, an estates working group has been established and a proposal commissioned via Unity to map out the requirements of the building, with a range of providers, including PCFT, OMBC, MioCare and some organisations within the voluntary sector, as well as individuals and community groups who currently utilise the building.

8.6 To ensure the work can be completed as quickly as possible. It is anticipated that the building will be required to close from 12 March 2018 until late August 2018, to ensure the works can be carried out in a safe environment and meet our requirements under health and safety. Alternative provision of the link centre services will be confirmed before the closure.

9 Options/Alternatives

9.1 There a number of significant proposed changes as to how the health & care system in Oldham. These changes are necessary to help the whole system meeting the ever growing depth and complexity of need for health & care services, whilst working to an ever more constrained financial envelope.

9.2 To facilitate the health integration agenda across the commissioning and provider element, the current health, care and wellbeing estate in Oldham has undergone a comprehensive review to ensure it is fit for purpose and is able to locate the reconfigured teams. There are four key aims to be considered in planning the use of the estate and that are all connected;

1. To enable the Joint Commissioning team to locate at Ellen House
2. An aim to use the Southlink site to provide accommodation for all children social care services. This will require the existing adult social care services to move out
3. To establish estate in each geographical cluster to enable the newly formed health and social care teams to be located. The aim is for the teams to locate in one GP practice in each cluster
4. To develop the plans for the Link Centre which will support the above and also enable community groups to continue to use part of the building.

9.2 Cabinet is asked to consider a number of options

Option 1 - Agreement

Cabinet is asked to approve:

- The establishment of the Commissioning Partnership Board, in shadow form, which is the joint committee between the Council and the CCG.
- The proposed section 75 agreement for Commissioning Partnership Board that will enable a scaling up of the integration of health and care commissioning in Oldham.
- The proposed early areas for integrated commissioning, which the Commissioning Partnership Board will focus on in 2018/19 and use to test how effective the new system is before further budgets and responsibilities are added in to the Section 75 agreement in future years.
- The use of Adult Social Care capital funding for the refurbishment and refit of the Link Centre.
- The temporary closure of the Link Centre and relocation of public facing services whilst this work is completed.

Cabinet is asked to note

- The proposal for a Single Accountable Officer to be appointed.
- The proposed Alliance provider structure to be developed between the key providers within Oldham.

9.3 **Option 2 – Partial Agreement**

Cabinet can choose to approve a selection of the above points, and either ask for more information to be provided or refuse to agree any of the points

9.4 **Option 3 – No Agreement**

Cabinet can chose to agree to none of the above points

10 **Preferred Option**

10.1 The preferred option is Option 1

11 **Consultation**

11.1 All relevant Cabinet members have been consulted and involved in the development of these proposals.

12 **Financial Implications**

12.1 The development of a Single Commissioning Function will bring together the budgets of the CCG and OMBC into an aligned structure aimed at increasing the effectiveness of the spend throughout the economy as a whole. The net budgets in scope are currently estimated at £62m, of which £50m is from Adult Social Care and £12m is from Public Health, representing the majority of the Adult Social Care provision and approximately 60% of the Public Health allocation. It is planned that the operation of the aligned budget structure will be incorporated within a S75 agreement building on the agreement that is already in place primarily for Better Care Fund resources. No Children's budgets have so far been quantified for aligning.

12.2 The budgets currently identified are net of income of about £30m, and exclude internal recharges. Control of these funds will remain with the Authority for the time-being but spend will be co-ordinated to ensure best value for the economy as a whole.

12.3 VAT advice is currently being sought to ensure that any structure that is established to deliver this work is as tax-efficient as possible and does not impose additional, unrecoverable costs to any partner in the economy.

12.4 To facilitate the health integration agenda capital works are proposed to reconfigure the internal layout of the Link Centre to provide accommodation for a number of health related partner organisations at an estimated cost of £640k. Existing Adult Social Care capital funding is available within the 2018/19 Capital Programme to finance the works.

(Anne Ryans – Director of Finance)

13 **Legal Services Comments**

13.1 In deciding whether and how to exercise its powers in relation to this proposal, Cabinet must consider the Council's fiduciary duty to conduct its administration in a fairly business-like manner with reasonable care, skill and caution along with a due and alert regard to the interest of the Council Tax payers. It is in the Council's discretion to determine what the interests of the Council Tax payers are and how they are best served following its analysis of the relevant costs and benefits. This needs to be considered both generally and specifically to those who will directly gain or suffer from the proposal. This balancing exercise is for the Council to determine after having given due consideration to the appropriate weight to be afforded to the relevant factors. The key question is whether no reasonable authority could have concluded that it would seek to make arrangements on such terms as set out in this report having considered all relevant matters and disregarded all irrelevant matters.

13.2 Local Government Act 1999 considerations. As a best value authority the Council must make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness. For the purpose of deciding how to fulfil the duty the Council must undertake consultations with representative groups.

13.3 Powers for the decision - The Council would have the power to take these decisions using a combination of powers comprising The Health Act 1999, The National Health Service Act 2006 and its general power of competence under Section 1 Localism Act 2011("GPC").

National Health Service Act 2006

Under this legislation local authorities and NHS bodies can enter into partnership arrangements to provide a more streamlined service and to pool resources, if such arrangements are likely to lead to an improvement in the way their functions are exercised. The powers permit:

- The formation of a fund (pooled budget) made up of contributions by both parties "out of which payments may be made towards expenditure incurred in the exercise of both prescribed functions of the NHS body and prescribed health-related functions of the authority.
- The exercise by an NHS body of a local authority's prescribed health-related functions in conjunction with the exercise of the NHS body of its prescribed functions
- The exercise by a local authority of an NHS body's prescribed functions in conjunction with the exercise by the local authority of its prescribed health-related functions
- The provision of staff, goods or services, or the making of payments between the two partners, in connection with the above arrangements.

These powers give rise to the three Health Act "flexibilities", namely:

- Pooled budgets
- Lead commissioning
- Integrated provision

The flexibilities can be used together, for example, where one partner takes on the role of commissioning services for both parties and managing existing services and staff, whether or not the partners retain separate budgets. Alternatively, the partners could establish an integrated service, where staff are integrated and services pooled and managed by one partner through a pooled budget. In addition, the NHS and Public Health (Functions and Miscellaneous provisions) Regulations 2013 enable certain CCG functions to be exercised jointly with a Local health Board, including through a joint committee.

Localism Act 2011 – Section 1

This is a very broad power and Section 1 states that:-

(1) A local authority has the power to do anything that individuals generally may do.

(2) [The power] applies to things that an individual may do even though they are in nature, extent or otherwise:

(a) Unlike anything the authority may do apart from subsection (1), or

(b) Unlike anything that other public bodies may do

It provides that where the GPC is conferred on the authority to do something, it can be do it in any way whatever, including for, or otherwise than for, the benefit of the authority, its area or persons resident or present in its area. The limitations set out in Section 2 of the Act and imposed on the GPC are :

- if the exercise of the GPC overlaps with a pre-commencement power then GPC is subject to the same restrictions as that power
- GPC does not enable the Council to do anything which it is unable to do because of a pre-commencement limitation
- GPC does not enable the Council to do anything which it is unable to do because of a post commencement limitation which is expressed to apply to GPC

There is an additional limitation that where, in the exercise of the general power, a local authority does things for a commercial purpose, the local authority must do them through a company. Commercial purpose is not defined in the Act.

Conditions applicable to section 75 arrangements

The power to enter into section 75 agreements is conditional on the following:

- The arrangements are likely to an improvement in the way in which those functions are exercised.
- The partners have jointly consulted people likely to be affected by such arrangements.

The pooled fund agreement

This must be in writing and specify:

- The agreed aims and outcomes of the pooled fund arrangements
- The contributions to be ,made to the pooled fund by each of the partners and how those contributions may be varied
- Both the NHS functions and the health-related functions the exercise of which are the subject of the arrangements
- The persons and the kinds of services likely to be affected by the functions exercised by the partnership
- The staff, goods, services or accommodation to be provided by the partners in connection with the arrangements
- The duration of the arrangements and provision for the review or variation or termination of the arrangements
- How the pooled fund is to be managed and monitored, including which body or authority is to be the host partner

13.4 Practical issues

- **Charging for services –** While health care is free for all, certain care services provided by local authorities are means-tested so this issue needs to be considered and accounted for
- **Consultation with interested parties –** Before entering into a partnership arrangement, the partners must ensure that their obligations to inform and consult interested parties are properly discharged. In respect of pooled funding arrangements and the carrying out of NHS functions by a local authority, the NHS trust must obtain the consent of each CCG. The parties must jointly consult those

persons who are affected by the arrangements, such as service user, carers, voluntary groups and, if the proposals involve a substantial development of the health service in the areas of a local authority , or a substantial variation in the provision of such service, the Overview and Scrutiny Committee. Special care must be taken to ensure service users understand the changes, particularly in respect of charging for services. Service providers should also be consulted if the arrangements require any variation to their contracts with the partnering organisation.

- **Transfers of staff –** Where the new arrangement involves the transfer of staff from the employment of one partners to another TUPE regulations are likely to apply and a number of issues will arise which need to be carefully considered and dealt with accordingly.
- **Accountability and governance –** Partners retain responsibility for the functions they have delegated. Therefore, appropriate schemes of delegation must be established and the scope of the activities to be performed by each partner must be clearly identified, together with provision for management and monitoring risks. Risks should be appropriately apportioned according to contribution and the partner best able to manage them.
- **Procurement process –** When commissioning any service, the partners must ensure the tender complies with the rules governing public procurement. Although some provisions of the Public Contracts Regulations may not apply to services commissioned under section 75 agreements, the principles of the EC Treaty apply to all contracts of cross-border interest. These principles require that the procurement process be fair, transparent and treat all bidders equally. Failure to comply with these principles actionable.

13.5 General Legal Considerations

Any property transactions would need to comply with the Council's Land and Property Protocols and in particular with the best value. Obligations in Section 123 of the Local Government Act 1972.

Any contracts /procurements to be entered into by the Council would need to comply with the Council's Contract Procedure Rules.

All transactions must comply with the Council's Financial Procedure Rules and appropriate external advice must be obtained to protect the Council's interests and to ensure all decisions are lawful and reasonable. In discharging its fiduciary and reasonableness duties the Council will also need to be mindful of the following;

- Procurement issues
- State aid issues
- Best value
- Vires considerations
- Appropriate consultation processes

(Colin Brittain)

14. **Co-operative Agenda**

14.1 The development of the single commissioning function supports the Council's ambition for co-operative services through the Council and Oldham Clinical Commissioning Group working together to drive development and improvements to the way health and care services are commissioned in Oldham.

The Oldham Cares outcomes framework, agreed by the Health and Wellbeing Board, is aligned to our ambition for Thriving Communities as it seeks to improve the health and wellbeing of residents in Oldham through empowering individuals and families to take control of their health.

[Heather Moore]

15 **People Services Comments**

15.1 People Services are working closely with Adults, Children's and Public Health to finalise the staff in scope who will be co-located with CCG colleagues at Ellen House. There are briefing sessions planned in early March for Trade Unions and staff on the direction of travel, these briefings will also provide an opportunity to work through any issues/concerns they have about the move which is scheduled for early April 2018. Initially, reporting arrangements, roles etc will remain unchanged but this is likely to change shortly after co-location, in consultation with staff.

(Emma Gilmartin, People Service Business Partner)

16 **Risk Assessments**

16.1 These proposals set out the first phase of planned changes involving working together with health. This will inevitably change the risk profile of the Council in order to achieve the envisaged benefits. It is important in going forward that the risks are considered and managed as the project moves on from the creation of the initial proposal (Mark Stenson)

17 **IT Implications**

17.1 There are no significant IT implications during the initial creation of the single commissioning function, as the initial integration will only require connectivity back the host organisation. (Chris Petrie and Ray Ward)

18 **Property Implications**

18.1 The asset management property plans that are being developed in relation to the Neighborhood Asset Reviews and Town Centre Masterplan; will reflect and support the outcomes to the integration of health and care commissioning and provision within Oldham.

18.2 At this stage, it is not proposed to include property and estates related budgets in the S75 agreement, due to the complexity of NHS estate management arrangements and our own arrangements with Unity Partnership. The Council Regeneration Section is currently represented on the Strategic Estates Group, which is a significant forum overseeing the ICO/NHS and OPE work streams. The project management of this complex estate may also require resource/ capacity to deal with peaks during the integration programme that may exceed current Council and CCG levels, which will need to be resolved at a future date.

[Peter Wood]

18 **Procurement Implications**

18.1 Strategic Sourcing approve the recommendations contained within this report on condition that the procurement of works for the Link Centre are compliant with the Council's Contract Procedure Rules and all relevant legislation.

[Joe Davies]

19 **Environmental and Health & Safety Implications**

19.1 None

20 **Equality, community cohesion and crime implications**

20.1 None

21 **Equality Impact Assessment Completed?**

21.1 No

22 **Key Decision**

22.1 Yes

23 **Key Decision Reference**

23.1 HWB-01-18.

24 **Background Papers**

24.1 Cabinet – 23rd October 2017 - Proposals for the future use of the Link Centre

25 **Appendices**

25.1 None.